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Supreme Court of the United States.

OCTOBER TERM, 1930. No. 368.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

The Appellant filed its appeal from the Court of Appeals of the State of Maryland, and pursuant to Rule 12 of this Court filed its Statement as to Jurisdiction on Appeal, to which no answer was filed by the Appellee, and this Court noted probable jurisdiction, and the Appellant filed its Brief on the merits and proceeded to argument.

Subsequent to the filing of the Brief of the Appellant on the merits, the Appellee filed a Motion to Dismiss or Affirm and Brief in support thereof March 16, 1931), to which this is an answer pursuant to the rules of this Court requiring the same, within twenty days after the said motion was filed.

The Appellee in its Brief in support of the Motion to Dismiss for want of jurisdiction states (p. 6):—

> "Except for the claim of immunity as a federal instrumentality, the claims asserted in the assignments of error were not presented to or passed upon by the lower court."

The Appellant has raised several questions, the one referred to being stated as follows:—

> 1. That the statute of the State of Maryland, as interpreted by the state Court of Appeals, providing for a tax upon all of the real property of the Appellant, a corporation of the State of Maryland, is invalid to the extent that it authorizes a tax to be levied upon the submerged lands constituting the bed of the Susquehanna River, which at the time of the assessment of the tax complained of was adopted by the United States of America as an instrumentality for navigation.

This question is raised by the requests for rulings before the State Tax Commission of Maryland, Nos. 7 (Record, p. 314) and 9 (Record, p. 315). They were before the Circuit Court of Harford County and before the Court of Appeals of the State of Maryland, and the claim of invalidity as to the tax so assessed under the authority created by the said statute was denied by both courts, the Circuit Court of Harford County disposing of the question adversely to the Appellant without an opinion, and the Court of Appeals disposing of the question in so much of its opinion as appears on pages 330 to 337 of the Record.

Appellant refers this Court to its Statement as to Jurisdiction on Appeal heretofore filed (pp. 8 to 12, inc.) and to Appellant's Brief on the merits (pp. 30 to 41, inc.). Also see *Fiske* v. *Kansas*, 274 U. S. 380, and the cases there cited.

The other points made in the Brief for the Appellee (p. 6) are as follows:—

> "III. The claim that the assessment is invalid in that it includes values attributable to the waters of the Susquehanna River and to a federal license, and the claim that the assessment is invalid for inequality are each equally unsubstantial.
>
> "IV. The claim of the Appellant to immunity from taxation as a federal agency is wholly unsubstantial."

The reasons for Appellant's claim to such exemption are found in its request for rulings No. 5 (R. p. 313) No. 7 (R. p. 314) and No. 9 (R. p. 315). Request No. 5 was disposed of by the State Tax Commission as follows (Rec. p. 316):—

> "5. Neither the Federal license nor the State franchise is the subject of assessment by the County Commissioners or State Tax Commission. So far, however, as the prayer may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is refused."

Requests No. 7 and No. 9 were refused completely (R. 316). In disposing of these questions raised in both Courts, the Circuit Court of Harford County, without an opinion, denied the claim of invalidity of the taxing power by affirming the assessment of the State Tax Commission, and the learned Court of Appeals disposed of them adversely to the claim of the Appellant as follows (R. pp. 336, 341, 344):—

> "That contention rests upon two fallacies, one, that the submerged land cannot be treated as property separate and apart from the water which flows over it, the other that the land and water together constitute a 'highway' and as such cannot be taxed." (Rec. p. 336.)
>
> * * * * * * *
>
> "The real value of these lands lies in the fact that they form a natural basin through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that

purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts." (Rec. p. 341.)

* * * * * * *

"Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project by permitting it to operate is taxable." (Rec. p. 344.)

The basis for the claim of immunity asserted by the Appellant against the power exercised by the State Tax Commission pursuant to the statute of the State of Maryland which, as interpreted by the Court of Appeals is claimed by the Appellant to be invalid, is set forth not only in the Statement as to Jurisdiction heretofore filed, but in Appellant's Brief on the merits (pp. 41 to 49, inclusive).

The Appellant asserts that the decisions of this Court clearly show the lack of power in the states, through the taxing authority thereof, to burden the exercise of a Federal franchise.

The learned counsel for the Appellee suggests a distinction between the asserted right of protection for the Federal franchise exercised by the Appellant and the protection against state taxation granted by the decisions of this Court to the patentee under a grant of a Federal patent, because of the propriety in granting to the latter an inducement to continue his inventive genius and to encourage others to become inventors.

This raises the thought that unless the exemption is granted to the holders of Federal licenses for hydro electric projects in the navigable waters of the United States from the excessive burdens imposed by state taxation on those lands devoted by the project in relief of the United States for expenses of improvements for navigation there is the probability that discouragement to such developments will ensue and the purpose of the Act defeated.

No exemption is claimed here for the tangible real or

personal property devoted to the commercial project made possible by the waters impounded for the improvement of navigation. Immunity is claimed solely for the lands forming the natural basin of the navigable waters and dedicated to navigation, whether such waters are used or not used to create electrical energy.

The extent to which the exercise of the state power of taxation may become not only a discouragement but establish for the taxing authorities the status of a "wrecking crew" is shown by the facts appearing in the record of this case.

It is held by the Court of Appeals of Maryland that there is no standard for comparison of the "submerged lands" of the Appellant with other lands in the State of Maryland, and it is fair to assume that similar situations exist in other states. The learned Court of Appeals of Maryland therefore holds that in the exercise of the power granted under the state statute the State Tax Commission is free to fix a valuation for such lands as to it may seem right and proper.

The valuation desired cannot be found apparently in the lands, as lands, but, as conceded by the state authorities, by the learned Court of Appeals and by counsel for the Appellee in the Brief filed in support of the Motion and in Reply on the merits, such desired value is only available by adding to the value as lands a value attributable solely to the Federal license.

The language of the Court of Appeals expresses the foundation for Appellant's claim to a right of review by this Court in the clearest possible language (Record, p. 344):—

> "Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises cannot be ighored."

This reasoning may apply with force to the power plant and facilities for generating electrical energy, but has no application to the lands in the bed of the River. These lands have been devoted effectively to improving navigation, whether the waters which continue to flow over them are used to produce power or not.

The State statute as interpreted by the State Court is held valid as authority to levy the tax complained of. This Court has jurisdiction to review and to reach a contrary conclusion.

Fiske v. *Kansas (supra);*
First National Bank v. *Anderson,* 269 U. S. 341.

The decision of the State Court (complained of by Assignments of Error III and IV, Rec. pp. 322, 323) that the power to tax the lands of a Federal licensee devoted to navigation is a valid exercise of power by the State under the authority of the State statute, is but one reason for the review of that decision by this Court. Another and equally important reason why this decision should be reviewed, because of its general application to all Federal licenses under the Federal Water Power Act, appears in the opinion of the learned Court of Appeals where it is held that, as stated by the Appellee, the Federal statute does not authorize the creation of a project in aid of navigation under the Commerce Clause of the Federal Constitution, but merely creates a commercial enterprise for the profit of the Licensee. This interpretation by the State Court, in effect, is a declaration that the Federal Water Power Act (Appendix hereto, pages 17 to 46) is unconstitutional and invalid, and an affirmance of the judgment of the Court below by this Court would be so interpreted.

The language of the Court of Appeals to the effect stated is as follows (Rec. pp. 331-332):—

> "The mere fact that the impounding of water by its dam may to some extent facilitate navigation for a short distance, is incidental and secondary to its primary purpose of manufacturing and selling electric

energy for profit, and it is not required to do any act or thing in aid of the Federal government except that it is permitted or licensed to complete a project for its own profit which incidentally may effect beneficially or otherwise the navigability of the river. But it is contended that the United States has a 'power coupled with an interest' in the project. Just what is meant by that expression or how it affects the question under consideration is not apparent. That the Federal government has an interest in the project and that it may exercise certain powers in respect to its operation and maintenance in aid of navigation cannot well be denied. For 'whenever' the United States desires to install navigation facilities, the licensee is required to grant to it such of its lands and rights of way and permit such control of its pools as may be required for that purpose, and as already stated the United States may upon the expiration of the term of the license take over the project upon the payment of just compensation therefor. It has therefore in a sense an interest in the project, and certain optional powers in respect to its control and operation. But such powers and interest are nothing more than a consideration for the license, and do not in themselves constitute the licensee a federal agency. The interest is essentially reversionary, and the powers, except such as refer to service and rates are for the most part contingent upon an event which may never occur, to wit, the installation of navigation facilities by the Federal government. The principal and controlling facts are that the licensee desired to establish on the Susquehanna river a power project to make money for its stockholders, that to accomplish that purpose it required a Federal license, and that the Federal government in consideration for that license exacted of the licensee certain concessions which may be valuable or meaningless accordingly as they may be affected by conditions which cannot now be predicted."

It must be conceded, however, that unless the Susquehanna River is a navigable stream under the Federal Rule (found as a fact and so referred to by the Federal Power Commission in License, Rec. pp. 288-311), and unless there is a present improvement in its navigation by the exercise of the powers granted to the licensee, asserted by the statute and the Federal Power Commission to be the purpose for granting the same, the license is invalid and the statute of Congress authorizing its grant is unconstitutional.

Alabama Power Co. v. *Gulf Power Co.*, 283 Fed. Rep. 606;
New Jersey v. *Sargent*, 269 U. S. 328.

It would seem that for this reason, also, this case is properly before this Court on appeal. If, however, the Court should conclude that the Court of Appeals of Maryland has not interpreted the Act of Congress in a manner that results in a declaration of its invalidity, but has merely denied an immunity claimed under it and the Fourteenth Amendment, then this Court is requested to consider the papers on appeal as though constituting a petition for writ of certiorari, and take jurisdiction under Paragraphs (b) and (c) of Section 344, Title 28, U. S. C. A.

Longest v. *Langford*, 274 U. S. 499;
Roche v. *McDonald*, 275 U. S. 449.

The Appellee asserts (Brief, p. 6) that "the claim that the assessment is invalid for inequality" is unsubstantial.

The Appellant concedes that there is no basis for this claim of inequality, if this Court approves of the finding of the Court below (Rec. p. 339) that as to the lands of the Appellant, *as lands*,

> "because of the unique character of the project there was no other property within the State which was like it, which could be used as a standard to measure its value."

The Appellant is confident that this Court will not so find because that conclusion ignores the identity of the taxable

unit, which is land, as land, and not the values added to it which are attributable to the pool in Pennsylvania, the waters of the Susquehanna River, and the right to use the latter granted by the Federal License.

Road Dist. v. *Missouri Pac. R. R. Co.*, 274 U. S. 188.

Mr. Justice Van Devanter (p. 192):—

> "The assessment to the railroad is not based on real property alone, but also on rolling stock and other personalty valued at $52,465.00, while all other assessments are confined to real property. In this there is an obvious and unreasonable discrimination."

and on p. 194:—

> "Our conclusion is that the assessment against the railroad is unreasonably discriminatory in so far as it is based on personal property, and in this respect violates the equal protection clause of the Fourteenth Amendment, and that it is otherwise so excessive as to be a manifestly arbitrary exaction and in violation of the due process of law clause of the same amendment."

See also *Standard Pipe Line* v. *Highway Dist.*, 277 U. S. 160.

The variance from the true base for taxation to an unlawful one, created to sustain the valuation imposed arbitrarily by the State Tax Commission, appears so well in the statement of the Court of Appeals that no re-statement need be made by this Appellant to show the ground of complaint (Record, pp. 338-339 and pp. 343-344):—

> "In assessing appellant's property therefore the Commission was bound to ascertain and declare its actual fair value and to assess it accordingly, but in approaching that problem it was confronted by certain difficulties inherent in the nature of the undertaking. First, there was the absence of any general market

for property of that character, because the value of the submerged lands depended so largely upon the contingency that capital could be secured to install the expensive and extensive equipment necessary to develop their latent possibilities, that lands could not well be sold at their real value unless sold as a part of or as ancillary to an entire project which included the structures and machinery needed to realize their highest utility. Again because of the unique character of the project there was no other property within the state which was like it, which could be used as a standard to measure its value.

"Obviously the simplest and the most convenient method of valuing appellant's property would have been to value the project as an entire thing. But the Commission was prevented from adopting that method both by the statutory law of the State and by the fact that a part of the property used in connection with and as a part of the project lay in another state. It was therefore compelled to separate the project into its component parts and to value such parts separately. And while that method was more difficult and more inconvenient than valuing the project as a whole, it involved no injustice or unfairness to the taxpayer because after all the value of the whole was but the sum of the values of its parts, considered as parts of the whole. Nor does appellant object that the Commission valued its submerged lands as a separate item, but because, it contends, its valuation was excessive, and that it was excessive because it included elements which were not incidental to or a part of the land as land, and because in arriving at its conclusion the Commission was affected by considerations which properly had no relation to the value of the land, and excluded from its consideration facts and circumstances which should have had a vital and controlling influence on its action" (Rec. pp. 338-339).

* * * * * * *

"Appellant's fifth prayer states that neither its Federal license nor its Maryland franchises may be taxed, and then adds 'neither is any method of valuation or assesment proper which includes in or adds to the valuation of such real estate as may be properly the subject of such assessment, the value of such franchises or either of them, or the capitalization of any income derived from the exercise of such franchises.' The Commission after conceding that neither the license nor the franchises could be taxed, refused that instruction in so far as it 'may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is refused.' No objection to that ruling was specially pressed in this court and we have been able to discover none. Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project by permitting it to operate is taxable. Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises can not be ignored" (Rec. pp. 343-344).

The Record clearly shows that there were so-called "rocky hill sides" assessed at ten dollars per acre, which have the same potential value as the Appellant's submerged lands, to hold the waters of the Susquehanna River, if and when the United States shall decide to raise the height of the Conowingo Dam, and that the lands in the bed of the river below the Dam have the same potential value, realizable if the United States shall erect another dam between the Conowingo Dam and tidewater.

These lands described as "rocky hillsides" or "woodland"

concededly have been taxed to others in the county at not in excess of $10 to $20 per acre, and to this Appellant at $20 per acre. It is conceded that prior to the flooding of the 2,110 acres, which are the subject of the assessment complained of, these lands, flooded or otherwise, carried an assessment for the year 1928 and prior thereto not in excess of $10 per acre. The increase of 10,000% in the assessment by the State Tax Commission, to $1113 per acre, was as of January 1, 1929. The fact that, as the record shows, the County Commissioners of Harford County in the exercise of the duty imposed upon them by law determined a valuation for these submerged lands of more than $3000 per acre (see Opinion of Court of Appeals, Record, p. 326), is fair evidence of the fact that if there is to be no basis for comparison between these and other lands in the taxing district, the assessed value will be the guess of those taxing authorities most greatly impressed by the needs of the State at the moment. The County Commissioners guessed $3,137 per acre for "submerged lands," and, together with other items, arrived at a total assessment of all of the tangible real property of Appellant in Harford County of $18,882,653 (Record, p. 326). The State Tax Commission reduced the Harford County assessment to $12,023,633 (Record, pp. 316-317; 327), guessing a value, *inter alia*, of $1113 per acre for the "submerged lands." The total of the difference is approximately $6,000,000. This sum, however, by the exercise of a further power in the State Tax Commission, approved by the Court of Appeals of Maryland, was simultaneously replaced by the assessed value imposed upon the capital stock of the Appellant in the sum of $6,000,000. (See Susquehanna Power Co. *v.* State Tax Commission, Case No. 369, p. 13), thereby preserving to Harford County its full expectations.

Counsel for the Appellee concede (Appellee's Brief on Motion to Dismiss, p. 17) that there is a Federal question if there is proof of an intentional inequality of assessment. The facts upon the record of this case show such inequality when it is remembered the tax is to be levied upon land as

land and not upon any other property rights of the owner thereof.

That the assessment of over $3000 per acre by the County Commissioners was arrived at on a basis that produced inequality is shown by the testimony of the experts (Messrs. Gregory and Fuller, Record, pp. 178, 193, 194, 205) to the effect that the total cost of the Project was taken by them and an allocation made to the structures and the tangible real property above water, including rocky hillsides, at the total cost thereof, and that the aggregate of these items of cost was deducted from the total cost of the "Project" in Harford County and the balance allocated to the *submerged portion of the land in the reservoir*, including in such cost so allocated to "submerged land" the cost of relocation of the Columbia & Port Deposit Railroad in Maryland, cost of relocating roads, telephone and telegraph lines, a portion of interest during construction, engineering and other intangibles.

There was no additional testimony offered to the State Tax Commission from which the value fixed by them of $1113 per acre could be arrived at, and the inference is unavoidable that it was an arbitrary cutting of the value of $3,137 fixed by the County Commissioners, in the face of the positive testimony to show that other *un*submerged lands of similar character as land owned by others carried an assessed value of $10 per acre.

The Appellant suggests that the record facts show "intentional" inequality of assessment. The Appellant fears, with apparent cause, that this intention will become systematic and habitual, and at an annual rate of increase equal to the initial rate of increase of 10,000%. If the power is recognized to exist by the affirmance of the learned Court below the exercise of the power would appear to be unlimited.

The State Court having found that federal questions were made before it, according to its practice, and having determined them, this Court will regard these questions as duly made for its consideration.

This Court has always recognized the difficulty of satis-

factorily defining the term "due process of law" in general terms applicable to all cases, and the desirability of judicial determination in each case as the question arises.

Miedreich v. *Lauenstein*, 232 U. S. 236;
Saltonstall v. *Saltonstall*, 276 U. S. 260;
Home Ins. Co. v. *Dick*, 281 U. S. 397.

The Appellant refers to the following decisions of this Court to show that substantial Federal questions raised by the conclusions of the Court below are clearly within the jurisdiction of this Court for its consideration:—

First National Bank v. *Anderson*, 269 U. S. 341.

Mr. Justice Van Devanter (p. 354):—

"We conclude that the state law, when construed and applied as authorizing the discrimination against the bank's shares which is charged in the petition, is in that regard in conflict with the restriction in the federal statute."

Kansas City Southern Ry. Co., v. *Road Improvement District &c.*, 256 U. S. 658.

Mr. Justice McReynolds (p. 661):—

"Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. Benefits from local improvements must be estimated upon contiguous property according to some standard which will probably produce approximately correct general results. To say that 9.7 miles of railroad in a purely farming section, treated as an aliquot part of the whole system, will receive benefits amounting to $67,900.00 from the construction of 11.2 miles of gravel road seems wholly improbable, if not impossible. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case. Royster Guano Co. *v.* Virginia, 253

U. S. 412, 415. It is doubtful whether any very substantial appreciation in value of the railroad property within the district will result from the improvements; and very clearly it cannot be taxed upon some fanciful view of future earnings and distributed values, while all other property is assessed solely according to area and position. Railroad property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all."

The learned Court of Appeals has, in general, sustained the findings of the State Tax Commission by affirming its rejection of points of law presented to it, and by holding that as to the points of law affirmed by it there is nothing on the record to show that the Commission did not follow the law as it charged itself to do.

The Appellant assumes that, when such conclusions are properly challenged, this Court will go behind the reasons of the State Court to ascertain whether or not there is foundation for them.

Nor. Pac. Ry. v. *North Dakota*, 236 U. S. 585;
Kansas City So. Ry. v. *Commission*, 223 U. S. 573;
Creswill v. *Knights of Pythias*, 225 U. S. 246, 261.

The Appellant asserts with confidence that the Federal questions are properly before this Court and that they not only are substantial but of vital interest to this Appellant, and to many others, including the United States as licensor of many licensees under the Federal Water Power Act.

Respectfully submitted,

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FREDERICK R. WILLIAMS,
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Counsel for Appellant.

APPENDIX.

THE FEDERAL WATER POWER ACT.

Approved June 10, 1920.

[PUBLIC—No. 280—66TH CONGRESS.]

(41 Statutes at Large p. 1063.)

An Act To create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the commission), which shall be composed of the Secretary of War, the Secretary of the Interior, and the Secretary of Agriculture. Two members of the commission shall constitute a quorum for the transaction of business, and the commission shall have an official seal, which shall be judicially noticed. The President shall designate the chairman of the commission.

SEC. 2. That the commission shall appoint an executive secretary, who shall receive a salary of $5,000 a year, and prescribe his duties, and the commission may request the President of the United States to detail an officer from the United States Engineer Corps to serve the commission as engineer officer, his duties to be prescribed by the commission.

The work of the commission shall be performed by and through the Departments of War, Interior, and Agriculture and their engineering, technical, clerical, and other personnel except as may be otherwise provided by law.

All the expenses of the commission, including rent in the District of Columbia, all necessary expenses for transportation and subsistence, including, in the discretion of the com-

mission, a per diem of not exceeding $4 in lieu of subsistence incurred by its employees under its orders in making any investigation, or conducting field work, or upon official business outside of the District of Columbia and away from their designated points of duty, shall be allowed and paid on the presentation of itemized vouchers therefor approved by a member or officer of the commission duly authorized for that purpose; and in order to defray the expenses made necessary by the provisions of this Act there is hereby authorized to be appropriated such sums as Congress may hereafter determine, and the sum of $100,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to be paid out upon warrants drawn on the Secretary of the Treasury upon order of the commission.

SEC. 3. That the words defined in this section shall have the following meanings for the purposes of this Act, to wit:

"Public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public-land laws. It shall not include "reservations," as hereinafter defined.

"Reservations" means national monuments, national parks, national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public-land laws; also lands and interests in lands acquired and held for any public purpose.

"Corporation" means a corporation organized under the laws of any State or of the United States empowered to develop, transmit, distribute, sell, lease, or utilize power in addition to such other powers as it may possess, and authorized to transact in the State or States in which its project is located all business necessary to effect the purposes of a license under this Act. It shall not include "municipalities" as hereinafter defined.

"State" means a State admitted to the Union, the District

of Columbia, and any organized Territory of the United States.

"Municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power.

"Navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids; together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

"Municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality.

"Government dam" means a dam or other work, constructed or owned by the United States for Government purposes, with or without contribution from others.

"Project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights

of way, ditches, dams, reservoirs, lands, or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

"Project works" means the physical structures of a project.

"Net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, in so far as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall in so far as applicable be published and promulgated as a part of the rules and regulations of the commission.

SEC. 4. That the commission is hereby authorized and empowered—

(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the commission may deem necessary or useful for the purposes of this Act.

In order to aid the commission in determining the net investment of a licensee in any project, the licensee shall, upon oath, within a reasonable period of time, to be fixed by the commission, after the construction of the original project or any addition thereto or betterment thereof, file with the commission, in such detail as the commission may require, a statement in duplicate showing the actual legitimate cost of construction of such project, addition, or betterment, and the price paid for water rights, rights of way, lands, or interest in lands. The commission shall deposit one of said statements with the Secretary of the Treasury. The licensee shall grant to the commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto.

(b) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the commission, to furnish such records, papers, and information in their possession as may be requested by the commission, and temporarily to detail to the commission such officers or experts as may be necessary in such investigations.

(c) To make public from time to time the information secured hereunder, and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The commission, on or before the first Monday in December of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Act, and in each case the parties thereto, the terms prescribed, and the moneys received, if any, on account thereof.

(d) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation

organized under the laws of the United States or any State thereof, or to any State, or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation, and for the development, transmission, and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided,* That licenses shall be issued within any reservation only after a finding by the commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War. Whenever the contemplated improvement is, in the judgment of the commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the commission and shall become a part of the records of the commission: *Provided further,* That in case the commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to the passage of

this Act: *And provided further,* That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (e) of this section, notice shall be given and published as required by the proviso of said subsection.

(e) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however,* That upon the filing of any application for a preliminary permit by any person, association, or corporation the commission, before granting such application shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application for eight weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

(f) To prescribe rules and regulations for the establishment of a system of accounts and for the maintenance thereof by licensees hereunder; to examine all books and accounts of such licensees at any time; to require them to submit at such time or times as the commission may require statements and reports, including full information as to assets and liabilities, capitalization, net investment and reduction thereof, gross receipts, interest due and paid, depreciation and other reserves, cost of project, cost of maintenance and operation of the project, cost of renewals and replacements of the project works, and as to depreciation of the project works and as to production, transmission, use and sale of power; also to require any licensee to make adequate provision for currently determining said costs and other facts. All such statements and reports shall be made upon oath, unless otherwise specified, and in such form and on such blanks as the commission may require. Any person who, for the purpose of deceiving, makes or causes to be made any false entry in the books or the accounts of such licensee, and any person who, for the pur-

pose of deceiving, makes or causes to be made any false statement or report in response to a request or order or direction from the commission for the statements and report herein referred to shall, upon conviction, be fined not more than $2,000 or imprisoned not more than five years, or both.

(g) To hold hearings and to order testimony to be taken by deposition at any designated place in connection with the application for any permit or license, or the regulation of rates, service, or securities, or the making of any investigation, as provided in this Act; and to require by subpœna, signed by any member of the commission, the attendance and testimony of witnesses and the production of documentary evidence from any place in the United States, and in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any member, expert, or examiner of the commission may, when duly designated by the commission for such purposes, administer oaths and affirmations, examine witnesses and receive evidence. Depositions may be taken before any person designated by the commission or by its executive secretary and empowered to administer oaths, shall be reduced to writing by such person or under his direction, and subscribed by the deponent. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(h) To perform any and all acts, to make such rules and regulations, and to issue such orders not inconsistent with this Act as may be necessary and proper for the purpose of carrying out the provisions of this Act.

SEC. 5. That each preliminary permit issued under this Act shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act

for such period or periods, not exceeding a total of three years, as in the discretion of the commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained and a license issued. Such permits shall not be transferable, and may be canceled by order of the commission upon failure of permittees to comply with the conditions thereof.

SEC. 6. That licenses under this Act shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the commission shall prescribe in conformity with this Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the commission after ninety days' public notice.

SEC. 7. That in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the commission equally well adapted, or shall within a reasonable time to be fixed by the commission be made equally well adapted, to conserve and utilize in the public interest the navigation and water resources of the region; and as between other applicants, the commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the navigation and water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

That whenever, in the judgment of the commission, the

development of any project should be undertaken by the United States itself, the commission shall not approve any application for such project by any citizen, association, corporation, State, or municipality, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the project as it may deem necessary, and shall submit its findings to Congress with such recommendations as it may deem appropriate concerning the construction of such project or completion of any project upon any Government dam by the United States.

The commission is hereby authorized and directed to investigate and, on or before the 1st day of January, 1921, report to Congress the cost and, in detail, the economic value of the power plant outlined in project numbered 3, House Document numbered 1400, Sixty-second Congress, third session, in view of existing conditions, utilizing such study as may heretofore have been made by any department of the Government; also in connection with such project to submit plans and estimates of cost necessary to secure an increased and adequate water supply for the District of Columbia. For this purpose the sum of $25,000, or so much thereof as may be necessary, is hereby appropriated.

SEC. 8. That no voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the commission; and any successor or assign of the rights of such licensee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assign were the original licensee hereunder: *Provided,* That a mortgage or trust deed or judicial sales made thereunder or under tax sales shall not be deemed voluntary transfers within the meaning of this section.

SEC. 9. That each applicant for a license hereunder shall submit to the commission—

(a) Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans, and specifications when approved by the commission shall be made a part of the license; and thereafter no change shall be made in said maps, plans, or specifications until such changes shall have been approved and made a part of such license by the commission.

(b) Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

(c) Such additional information as the commission may require.

SEC. 10. That all licenses issued under this Act shall be on the following conditions:

(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the commission will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development, and of other beneficial public uses; and if necessary in order to secure such scheme the commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of a capacity in excess of one hundred horsepower without the prior approval of the commission; and any emergency alteration or addition so made

shall thereafter be subject to such modification and change as the commission may direct.

(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) That after the first twenty years of operation out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the actual, legitimate investment of a licensee in any project or projects under license the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the commission for the purpose of reimbursing the United States for the costs of the administration of this Act; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached,

and in fixing such charges the commission shall seek to avoid increasing the price to the consumers of power by such charges, and charges for the expropriation of excessive profits may be adjusted from time to time by the commission as conditions may require: *Provided,* That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the commission shall fix a reasonable annual charge for the use thereof, and such charges may be readjusted at the end of twenty years after the beginning of operations and at periods of not less than ten years thereafter in a manner to be described in each license: *Provided,* That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than one hundred horsepower capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the commission.

(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the

commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the commission.

Whenever such reservoir or other improvement is constructed by the United States the commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

(g) Such other conditions not inconsistent with the provisions of this Act as the commission may require.

(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower capacity, the commission may in its discretion waive such conditions, provisions, and requirements of this Act, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided,* That the provisions hereof shall not apply to lands within Indian reservations.

SEC. 11. That if the dam or other project works are to be constructed across, along, or in any of the navigable waters of the United States, the commission may, in so far as it deems the same reasonably necessary to promote the present and future needs of navigation and consistent with a reasonable investment cost to the licensee, include in the license any one or more of the following provisions or requirements:

(a) That such licensee shall, to the extent necessary to preserve and improve navigation facilities, construct, in whole or in part, without expense to the United States, in connection with such dam, a lock or locks, booms, sluices, or other structures for navigation purposes, in accordance

with plans and specifications approved by the Chief of Engineers and the Secretary of War and made part of such license.

(b) That in case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost, such of its land and its rights of way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete such navigation facilities.

(c) That such licensee shall furnish free of cost to the United States power for the operation of such navigation facilities, whether constructed by the licensee or by the United States.

SEC. 12. That whenever application is filed for a project hereunder involving navigable waters of the United States, and the commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures can not, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (a) hereof, the commission may grant the application with the provision to be expressed in the license that the licensee will install the necessary navigation structures if the Government fails to make provision therefor within a time to be fixed in the license and cause a report upon such project to be prepared, with estimates of cost of the power development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures.

SEC. 13. That the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due dili-

gence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended once but not longer than two additional years and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the commission. In case the construction of the project works, or of any specified part thereof, have been begun but not completed within the time prescribed in the license, or as extended by the commission, then the Attorney General, upon the request of the commission, shall institute proceedings in equity in the district court of the United States for the district in which any part of the project is situated for the revocation of said license, the sale of the works constructed, and such other equitable relief as the case may demand, as provided for in section 26 hereof.

SEC. 14. That upon not less than two years' notice in writing from the commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the

development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by agreement between the commission and the licensee, and in case they can not agree, by proceedings in equity instituted by the United States in the district court of the United States in the district within which any such property may be located: *Provided,* That such net investment shall not include or be affected by the value of any lands, rights of way, or other property of the United States licensed by the commission under this Act, by the license, or by good will, going value, or prospective revenues: *Provided further,* That the values allowed for water rights, rights of way, lands, or interest in lands shall not be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided,* That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.

SEC. 15. That if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or

required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid.

SEC. 16. That when in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee.

SEC. 17. That all proceeds from any Indian reservation

shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder shall be paid into the Treasury of the United States, subject to the following distribution: Twelve and one-half per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to "Miscellaneous receipts"; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands, national monuments, national forests, and national parks shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests, national parks, public lands, and national monuments, from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is hereby reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of War in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States.

SEC. 18. That the operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War. Such rules and regulations may include the maintenance and operation by such licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Sec-

retary of Commerce; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 25 hereof.

SEC. 19. That as a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon it own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

SEC. 20. That when said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or

controlled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable, nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful; and whenever any of the States directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purpose of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate commerce, approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the commission for any project or projects under license in excess of the value or values

prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the commission or by this Act.

SEC. 21. That when any licensee can not acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

SEC. 22. That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to

issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

SEC. 23. That the provisions of this Act shall not be construed as affecting any permit or valid existing right of way heretofore granted, or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality, holding or possessing such permit, right of way, or authority may apply for a license hereunder, and upon such application the commission may issue to any such applicant a license in accordance with the provisions of this Act, and in such case the provisions of this Act shall apply to such applicant as a licensee hereunder: *Provided*, That when application is made for a license under this section for a project or projects already constructed, the fair value of said project or projects, determined as provided in this section, shall for the purposes of this Act and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value may, in the discretion of the commission, be determined by mutual agreement between the commission and the applicant or, in case they can not agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or projects may be located, upon the application of either party, to hear and determine the amount of such fair value.

That any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce between foreign nations and among the several States, may in their discretion file declaration of such intention with the commission, whereupon the commission shall cause immediate investigation of such proposed

construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such, person, association, corporation, State, or municipality shall not proceed with such construction until it shall have applied for and shall have received a license under the provisions of this Act. If the commisison shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws.

SEC. 24. That any lands of the United States included in any proposed project under the provisions of this Act shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of this Act, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Act, upon payment of any damages to crops, buildings, or other improvements

caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites or in connection with water-power development or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

SEC. 25. That any licensee, or any person, who shall willfully fail or who shall refuse to comply with any of the provisions of this Act, or with any of the conditions made a part of any license issued hereunder, or with any subpœna of the commission, or with any regulation or lawful order of the commission, or of the Secretary of War, or of the Secretary of Commerce as to fishways, issued or made in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall, in the discretion of the court, be punished by a fine of not exceeding $1,000, in addition to other penalties herein prescribed or provided by law; and every month any such licensee or any such person shall remain in default after written notice from the commission, or from the Secretary of War, or from the Secretary of Commerce, shall be deemed a new and separate offense punishable as aforesaid.

SEC. 26. That the Attorney General may, on request of the commission or of the Secretary of War, institute proceedings in equity in the district court of the United States in the district in which any project or part thereof is situated for the purpose of revoking for violation of its terms any permit or license issued hereunder, or for the purpose of remedying or correcting by injunction, mandamus, or other process any act of commission or omission in violation of the provisions of this Act or of any lawful regula-

tion or order promulgated hereunder. The district courts shall have jurisdiction over all of the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders, and decrees to compel compliance with the lawful orders and regulations of the commission and of the Secretary of War, and to compel the performance of any condition imposed under the provisions of this Act. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the licensee which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 14 hereof at the termination of the license.

SEC. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

SEC. 28. That the right to alter, amend, or repeal this Act is hereby expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this Act, or the rights of any licensee thereunder.

SEC. 29. That all Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That nothing herein contained shall be held or construed to modify or

repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights of way to the city and county of San Francisco, in the State of California: *Provided further*, That section 18 of an Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved August 8, 1917, is hereby repealed.

SEC. 30. That the short title of this Act shall be "The Federal Water Power Act."

Approved, June 10, 1920.

[PUBLIC—No. 412—71ST CONGRESS]

[S. 3619]

An Act To reorganize the Federal Power Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 and 2 of the Federal Water Power Act are amended to read as follows:

"That a commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the 'commission') which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the commission: *Provided,* That after the expiration of the original term of the commissioner so designated as chairman by the President, chairmen shall be elected by the commission itself, each chairman when so elected to act as such until the expiration of his term of office.

"The commissioners first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from the date this section, as amended, takes effect, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter

upon the duties of or hold the office of commissioner. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, and the commission shall have an official seal of which judicial notice shall be taken. The commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

"Each commissioner shall receive an annual salary of $10,000, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the seat of government upon official business.

"The principal office of the commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the commission may hold special sessions in any part of the United States.

"SEC. 2. The commission shall have authority to appoint, prescribe the duties, and fix the salaries of, a secretary, a chief engineer, a general counsel, a solicitor, and a chief accountant; and may, subject to the civil service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with the Classification Act of 1923, as amended. The commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the commission as engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the commission; and such detail is hereby authorized. The President may also, at the request of the commission, detail, assign, or transfer to the commission engineers in or under the Departments of the Interior

or Agriculture for field work outside the seat of government under the direction of the commission.

"The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute its functions. Expenditures by the commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission or by such other member or officer as may be authorized by the commission for that purpose."

SEC. 2. Subsection (c) of section 4 of the Federal Water Power Act is amended by adding at the end thereof the following new sentence: "Such report shall contain the names and show the compensation of the persons employed by the commission."

SEC. 3. Notwithstanding the provisions of section 1 of this Act the Federal Power Commission as constituted upon the date of the approval of this Act shall continue to function until the date of the reorganization of the commission pursuant to the provisions of such section. The commission shall be deemed to be reorganized upon such date as three of the commissioners appointed as provided in such section 1 have taken office, and no such commissioner shall be paid salary for any period prior to such date.

SEC. 4. This Act shall be held to reorganize the Federal Power Commission created by the Federal Water Power Act, and said Federal Water Power Act shall remain in full force and effect, as herein amended, and no regulations, actions, investigations, or other proceedings under the Federal Water Power Act existing or pending at the time of the approval of this Act shall abate or otherwise be affected by reasons of the provisions of this Act.

Approved, June 23, 1930.